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1 to say that?

2 MR. KIPNES: That is a
3 extremely large assumption. Assume the
4 moon is made of green cheese if you want
5 him to.

6 BY MR. LEVY:

7 Q. Assuming that Mr. Crowley wrote
8 this, does that impact on your conclusion
9 that at least on the day he wrote it, he
10 had no conflict?

11 MR. KIPNES: Objection to
12 the form.

13 MR. MILLER: Objection to
14 the form.

15 THE WITNESS: I don't see
16 the conflict myself. Maybe there is a
17 conflict. Maybe after I dwell on it to
18 the same extent that you and your
19 colleagues have dwelled on it, maybe I
20 would come to a similar conclusion. I
21 can't do it sitting here. I don't have
22 that type of imagination.

23 BY MR. LEVY:

24 Q. How long would it take you to dwell,

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1 sir, on the statement that Crowley thinks
2 he has got a commitment that after the
3 compromise plan is confirmed he would be
4 reinstated and receive \$5,000,000? Isn't
5 that plainly a conflict?

6 MR. KIPNES: Objection to
7 the form of the question.

8 MS. KRUGMAN: Objection.

9 THE WITNESS: I can't do
10 better than I have done. I have done
11 the best I can for you. I can't do
12 better.

13 BY MR. LEVY:

14 Q. Do you think it would be deceiving
15 the Court to have a plan under which after
16 confirmation Crowley would be reinstated
17 with Cerberus and receive \$5,000,000?

18 MR. KIPNES: I would
19 instruct the witness not to answer that
20 question. This is not a Rule 2004
21 examination. This is a deposition
22 limited, as you have agreed, to the
23 question of the pending motions
24 regarding Crowley. And once you use the

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1 word "plan," the question is beyond the
2 scope and I would ask the witness not to
3 answer it.

4 MR. LEVY: Perhaps, I was
5 unclear. I didn't mean the plan. I
6 mean any plan.

7 MR. KIPNES: Any plan. A
8 plan of reorganization?

9 MR. LEVY: You have made it
10 clear that we don't want to deal with
11 this.

12 BY MR. LEVY:

13 Q. Look at the last sentence of this
14 page, number 65.

15 A. The last sentence says, "If this is
16 not our deal, please just send this
17 letter" --

18 Q. I'm sorry, I mean the one before
19 that.

20 A. "Also, Cerberus will indemnify me
21 for all of my legal fees, plus pay me the
22 difference between what I ultimately
23 receive from Coram by way of bonuses and 11
24 million 2."

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1 Q. Doesn't that link Cerberus and Coram
2 in a way that plainly is a conflict if
3 Cerberus is paying Crowley for work he did
4 for Coram?

5 MR. KIPNES: That's about
6 the forty-seventh time.

7 MR. MILLER: Is this a
8 hypothetical if this was an agreement
9 between the parties?

10 MR. GODNICK: I didn't hear
11 the question.

12 MR. LEVY: I will withdraw
13 that question.

14 BY MR. LEVY:

15 Q. I am not at the moment, at the
16 moment, suggesting that Cerberus did or did
17 not agree to this. I'm focusing on your
18 reaction to the fact that if Crowley wrote
19 this, that at the time he wrote it he felt
20 he had a commitment that Cerberus would pay
21 him the difference between what he got from
22 Coram by way of bonuses, which he claims he
23 is entitled to, and \$11,000,000. Isn't
24 that a conflict?

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1 MR. KIPNES: Asked and
2 answered. I lost count how many times.

3 THE WITNESS: It may be. I
4 don't see it offhand. Maybe there is a
5 conflict.

6 BY MR. LEVY:

7 Q. Let's move along.

8 A. I would have to know more about the
9 facts and the personalities and the
10 context. But to suggest that two people
11 are engaging in conflict which borders on
12 the improper, I don't want to do by way of
13 speculation. I don't think that's fair. I
14 don't think it's appropriate and it's
15 highly hypothetical. Ask them and then you
16 and the Court can decide that.

17 Q. The next document is what appears to
18 be a letter signed by Dan Crowley addressed
19 to Steve Feinberg, CRX 71, 72 and 73.

20 (Trustee-20, a letter dated
21 May 8, 2002, marked for identification.)

22 BY MR. LEVY:

23 Q. Will you read that exhibit. This
24 document has "Redacted" on these pages,

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1 presumably, by Mr. Crowley's lawyer. Some
2 of it is the same. Some of it is different.

3 A. What is the question?

4 Q. You have never seen this before, did
5 you?

6 A. No.

7 Q. In the first sentence, Mr. Crowley
8 and, I think, we can assume he wrote it
9 because that is his signature, says, "I
10 have been thinking a great deal about our
11 dinner last week because, while I have
12 suspended it, I still haven't formally
13 ended my contract with Cerberus."

14 Is that consistent with your
15 understanding?

16 A. Yes. That is what he is in effect
17 saying, I don't have an active contract,
18 but I have these claims. I don't want to
19 tear up the contract until we resolve those
20 claims.

21 Q. And the contract might be reinstated,
22 that's the implication?

23 A. If I ever get out of Coram.

24 Q. If I ever get out of Coram.

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1 Look at the last page, the
2 third paragraph from the bottom. Last
3 page, 73.

4 A. Starting, "In fairness to myself"?

5 Q. That's the paragraph, but that is
6 not what I was going to ask you about. The
7 next-to-the-last sentence, fourth line near
8 the end. "Steve, I also am anxious that
9 unforeseen events sometime overtake good
10 intentions. You could get hit by a bus and
11 be gone. Cerberus could get bought out, or
12 whatever. The point is that then I would
13 be left with nothing."

14 Does that suggest to you
15 that they have a secret agreement that
16 would die if Feinberg was hit by a bus?

17 MR. KIPNES: Objection to
18 the question. Calls for speculation.

19 THE WITNESS: I don't know
20 what kind of agreement they had. I
21 don't know. I can't guess. I will not
22 guess, no point to it.

23 BY MR. LEVY:

24 Q. You testified earlier, I believe,

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1 that you often acted on your impressions of
2 people. What is your impression of that
3 sentence?

4 A. Well, having an impression of a
5 person and having an impression of a
6 sentence is two different things. I can
7 see the person in front of me, his facial
8 expressions. I can't see anybody in front
9 of me. I don't know these people.

10 Q. Moving along to the 10-Q.

11 (Recess taken, 2:39 p.m.)

12 (Back on the record, 2:46
13 p.m.)

14 BY MR. LEVY:

15 Q. The next document. The next
16 document is a Form 10-Q for the period
17 ended March 31st, 2002.

18 (Trustee-21, a Form 10-Q,
19 marked for identification.)

20 BY MR. LEVY:

21 Q. This is the Form 10-Q filed by Coram
22 for the quarter ending June 30, 2002.

23 MR. KIPNES: What I was
24 handed is a cover page and an excerpt

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1 from the Form 10-Q for the period ended
2 June 30, 2002, and a cover page and an
3 excerpt for the Form 10-Q for the period
4 ended September 30, 2002.

5 MR. LEVY: That is exactly
6 and completely correct.

7 MR. KIPNES: Okay.

8 BY MR. LEVY:

9 Q. Now, I take it, Mr. Adams, you
10 participated in the preparation of both the
11 quarterly report for the quarter ended
12 June 30 and September 30 of 2002?

13 A. Correct.

14 Q. And in the first one, which is for
15 the period ended June 30, looking at the
16 second page and the second paragraph from
17 the bottom above the heading there, it says
18 "Mr. Crowley and Cerberus agreed to suspend
19 their contract and all related obligations
20 immediately after the Bankruptcy Court's
21 denial of the second joint plan of
22 reorganization on December 21st, 2001. The
23 contract remains suspended through
24 August 16, 2002."

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1 A. Yes.

2 Q. It was your understanding that in
3 August that the contract had not yet been
4 terminated, but was only suspended?

5 A. Correct.

6 Q. Did you make any inquiry of
7 Mr. Crowley or anyone else as to when they
8 intended to terminate their contract?

9 A. No. I talked to my counsel about
10 it. They explained what they were doing.
11 I said they. That meant Crowley and
12 Cerberus; that they were continuing to
13 suspend until they could reach some
14 accommodation on the amount of money that
15 Crowley claimed that Cerberus owed them.

16 Q. Did they explain to you if they
17 didn't reach that accommodation that they
18 could just reinstate the contract?

19 A. They didn't go into that, no.

20 Q. Would that be your understanding?

21 A. I have not looked at the contract.

22 Q. Of the word suspend, would that be
23 your understanding?

24 A. It may be. I don't know.

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1 Q. Which counsel explained that to you?

2 Mr. Bressler? Mr. Devine?

3 A. I don't know. We worked together.

4 It's a pretty big operation. It's not an

5 operation controlled only by myself. I

6 have a lot of people there.

7 Q. A lot of people you rely on?

8 A. All those executives, fifteen

9 executives, beside Crowley and people in my

10 office. I'm just one person.

11 Q. What percentage of your time, your

12 professional time since you have been

13 appointed, roughly, have you devoted to the

14 affairs of Coram.

15 MR. BEATIE: Objection.

16 Totally irrelevant. Ridiculous.

17 THE WITNESS: I can tell you

18 it's fairly substantial; and don't be

19 mislead by my timesheets because I am

20 notorious and always have been for not

21 writing things down on timesheets. I

22 don't do that.

23 To answer your question, if

24 you are asking the question how much

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1 actual time as distinguished from
2 timesheets time, I would say twenty-five
3 percent.

4 BY MR. LEVY:

5 Q. Twenty-five percent of your total
6 time?

7 A. Yes.

8 Q. Can you tell me actual time, not
9 timesheet time, roughly, how many hours a
10 month do you devote to your entire
11 professional activities?

12 A. Well --

13 MR. KIPNES: Objection.

14 A. This is going to embarrass my
15 colleagues.

16 MR. KIPNES: Objection to
17 the form of the question. When you say
18 "professional," what do you mean by
19 that? Do you mean as an attorney? Do
20 you mean --

21 A. Well, let me answer.

22 MR. KIPNES: As a Trustee?

23 A. I generally come into the office
24 before nine o'clock. I do not go out to

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1 lunch. Maybe once a month I will go out to
2 lunch. I generally stay until four
3 o'clock. I generally work on Saturdays. I
4 generally work on Sundays. So, if you
5 added that up, I don't know, it comes to
6 about sixty hours a week, something like
7 that. So, if you take the sixty hours --

8 Q. Could I stop you at sixty hours? If
9 you work from 9 to 3, that is six hours; 9
10 to 4, that is seven hours times five.

11 MR. GODNICK: He said he
12 comes in before nine.

13 A. I work at night, too. I know you
14 are going to get me in trouble with these
15 questions because nobody here can spend the
16 amount of time that I have spent. Nobody
17 can do that. I don't expect anybody. I
18 don't expect you. I don't expect my
19 colleagues. I don't ask them to do it. That
20 happens to be my work ethic.

21 Q. That is, roughly, you say sixty
22 hours a week?

23 A. I would think sixty hours.

24 Q. What percentage, if you know,

1 roughly, of Crowley's time is spent on

2 Coram?

3 A. All I can tell you is that any time

4 that I have been there or call him, he

5 either answers my call or returns the call

6 almost right away. I don't know. I hope

7 it's a lot.

8 Q. Have you ever investigated -- have

9 you ever asked him how much time he

10 spends on --

11 A. Yes. He says he is generally here.

12 Q. Where is "here"?

13 A. Denver. He goes home on the

14 weekend. He has an apartment in

15 Sacramento. He is entitled to go home for

16 the weekend.

17 Q. He has told you that he spends most

18 of his time in Denver?

19 A. Yes.

20 Q. Have you ever asked any of the

21 executives you have talked to whether that

22 is true?

23 A. Well, I don't think I have ever

24 asked them that way. I think I have talked

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1 to Mr. Marabito who is right below him and
2 he indicated that he never has any difficulty
3 discussing matters with Mr. Crowley.

4 Q. That wasn't my question. My
5 question was that while he is in Denver --

6 A. I was assuming that he just walks
7 into his office.

8 Q. That is your assumption. That's not
9 based on anything Marabito told you?

10 A. I have not checked on him, no, nor
11 have I checked on Barry Bressler or
12 Will Kipnes or Joe Devine. I just don't do
13 that. It's just not my nature to do that.

14 Q. Now, the 10-Q, this is now for the
15 period ended September 30. We have
16 something new. In the first paragraph on
17 page 2.

18 A. "Effective August 1st 1999, Mr.
19 Crowley"?

20 Q. Skip down to the last sentence.
21 "Mr. Crowley and Cerberus agreed to suspend
22 their contract."

23 A. Mr. Crowley and Cerberus have
24 advised the Chapter 11 Trustee that such

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1 contract has been terminated and that no
2 payments have been made by Cerberus to
3 Mr. Crowley during 2002."

4 Q. Is that true? Did they advise you
5 of that?

6 A. They did not advise me directly.
7 Crowley did, but not Cerberus. Cerberus
8 may have advised my attorney's, but not me.
9 I did not talk to Cerberus.

10 Q. Did your attorney's ever tell you
11 whether or not Cerberus had advised them to
12 that effect?

13 A. I can't say that they told me that
14 that was my impression.

15 Q. Under what circumstances did
16 Mr. Crowley tell you that they had
17 terminated their contract?

18 A. When we were going over this document.
19 We did it with --

20 Q. "This document", meaning the 10, the
21 draft of the 10-Q?

22 A. Yes. We would review these documents
23 by conference call.

24 Q. And when he said to you we have

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1 terminated, we Crowley and Cerberus, have
2 terminated their agreement, did you ask
3 whether you could look at the documents
4 evidencing the termination?

5 A. No, I did not.

6 Q. Have you ever asked him?

7 A. No.

8 Q. You just totally relied on
9 Mr. Crowley telling you the truth?

10 A. Correct.

11 Q. And you never called Cerberus to say
12 is that correct, that it's terminated?

13 A. I never called Cerberus.

14 Q. Do you know the terms of the
15 termination agreement, assuming there is
16 one?

17 A. I have not seen it. I don't know.

18 Q. If the termination agreement
19 provided that Crowley preserved his right
20 to make claims and sue Cerberus even after
21 the termination, would you view that as a
22 termination?

23 MR. KIPNES: Objection to
24 the form of the question.

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1 THE WITNESS: I just don't
2 know. I can't answer that question.

3 BY MR. LEVY:

4 Q. Would that give you some concern as
5 to whether there was a conflict of interest
6 if Mr. Crowley preserved the right in the
7 so-called termination agreement to sue
8 Cerberus?

9 MR. KIPNES: Objection to
10 the form. Asked and answered.

11 MR. BEATIE: I want a
12 termination agreement and general
13 release? Is that what you are asking,
14 without saying it in some many words,
15 because it sounds too stupid?

16 THE WITNESS: Give me the
17 question again, please.

18 (Question read back.)

19 THE WITNESS: I have not
20 seen the agreement. I don't know the
21 arrangement. Offhand, I don't think
22 there is -- I can't answer that.

23 BY MR. LEVY:

24 Q. When Crowley told you that the

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1 agreement had been terminated, at least,
2 did you understand that meant that his
3 claims against Cerberus had finally been
4 resolved?

5 MR. KIPNES: Objection.

6 MR. GODNICK: Objection.

7 THE WITNESS: He didn't tell
8 me. He didn't tell me as such. We were
9 going over this in a conference call
10 regarding this document. My guess is
11 that sentence was read by somebody and
12 there was no objection. I did not focus
13 on the difference between termination
14 and suspension.

15 BY MR. LEVY:

16 Q. You never asked Mr. Crowley is it
17 correct that you have terminated your
18 agreement with Cerberus, correct?

19 A. As such, no, I did not ask him that
20 question.

21 Q. Who else was on the phone call?

22 A. I thought I just answered that
23 question. Mr. Bressler, Joe Devine.

24 Q. To your recollection, was there

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1 anybody else on the call?

2 A. There may have been.

3 Q. But you have no recollection?

4 A. No, I don't.

5 Q. The next document which will be

6 Exhibit 23 is a letter dated, 22, is a

7 letter from Scott Schreiber, the attorney

8 for Mr. Crowley to Mr. Barry Bressler dated

9 October 3, 2002, showing a copy to both

10 Daniel Crowley and to you, Mr. Adams.

11 (Trustee-22, a letter dated

12 October 3, 2002, marked for

13 identification.)

14 BY MR. LEVY:

15 Q. Mr. Adams, did you receive a copy of
16 this letter?

17 A. I believe I did.

18 Q. At the top of the second page,

19 Mr. Schreiber says that Mr. Crowley has --

20 "While Mr. Crowley has no desire to renew

21 an Employment Agreement which to date

22 remains unperformed in so many ways on the

23 debtor's side," did you understand this as

24 a threat by Mr. Crowley to quit as CEO?

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1 A. I didn't interpret it as such.

2 Q. You did not?

3 A. No.

4 Q. Did it subsequently come to your
5 attention that Mr. Crowley or, at least,
6 his lawyer felt that this was a notice of
7 termination of the Coram agreement?

8 A. It did not come to my attention that
9 I can recall.

10 Q. When did you begin negotiating with
11 Mr. Crowley over the terms of his contract
12 which was due to expire at the end of
13 November?

14 A. I would say October. That is a
15 guess.

16 Q. About the time of this letter?

17 A. Yes. It must have been a little bit
18 before. This letter is dated October 3rd
19 and it reflects the situation that had
20 already occurred. So, I would guess,
21 maybe, September, late September. That
22 ties in with that letter from the financial
23 advisor about crisis managers and things
24 like that. It was all happening about that

1 time.

2 Q. The letter begins, "I understand
3 that you and Mr. Crowley have recently
4 spoken about Mr. Crowley's role at Coram
5 after his contract expires on November 30,
6 2002."

7 I assume Mr. Bressler
8 imparted to you what conversation he had
9 with Mr. Crowley?

10 A. He kept me up-to-date. I talk to
11 Mr. Bressler several times a day.

12 Q. And what did Mr. Bressler tell you
13 about that conversation that is referred to
14 in the first sentence where he spoke to
15 Mr. Crowley about the contract expiration?

16 A. One of the things that Mr. Bressler
17 told me was that he could not be considered
18 the CEO after that time under the new
19 contract. That was one of the
20 understandings, so that we had to develop a
21 title that would conform to that requirement,
22 but yet not the disturb the employees, the
23 customers and all the other people.

24 Q. Mr. Bressler explained why he

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1 couldn't have the title of CEO?

2 A. I think he did. I can't tell you
3 what it is offhand; something to do with
4 recent legislation. I can't tell you for
5 sure.

6 Q. You mean the Sarbanes-Oxley?

7 A. Yes.

8 Q. Did Mr. Bressler tell you, apart
9 from that issue, whether there were other
10 issues?

11 A. Yes.

12 Q. What were the other issues?

13 A. The first issue was whether we
14 should have any contract at all. Should we
15 do it? Should we seek somebody else?
16 Should I take it over?

17 After talking with the
18 financial advisors, we concluded that given
19 the fact that we wanted to file a plan as
20 quickly as possible, it would be best to
21 keep them during that period for fear that
22 it would undermine the value of the
23 company. That, I would say, is probably
24 the major issue.

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1 The next issue was
2 compensation. I told Mr. Bressler,
3 although I didn't have to, that I was not
4 one for elaborate compensation. We then
5 got into the question of the bonuses. I
6 gave Mr. Bressler my idea. I told him that
7 something would have to be done with the
8 huge claim that Crowley had under the
9 original contract; that we had to make
10 every effort to reduce that claim because
11 that could seriously effect the distribution.

12 Q. You said that you didn't have to
13 tell Mr. Bressler something about an issue
14 involving compensation, something about an
15 issue involving compensation.

16 A. I didn't have to tell him.

17 MR. KIPNES: He said he did
18 not have to tell Mr. Bressler that he is
19 not one for spending a lot of money,
20 elaborate compensation.

21 THE WITNESS: He knew that.

22 BY MR. LEVY:

23 Q. In connection with the issue of
24 whether you should seek someone else, were

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1 you advised by anyone specifically don't
2 seek someone else? Keep Dan Crowley?

3 A. I think we went over this this
4 morning.

5 MR. BEATIE: Objection.

6 BY MR. LEVY:

7 Q. Will you answer that for me?

8 A. Nobody said keep Mr. Crowley. We
9 were told that disturbing that management
10 pattern at that time would not be a very
11 good idea. We are going to file a plan.
12 It would undermine the credibility. It
13 would shake the confidence of the customers,
14 all that.

15 Q. And that came from who, Scott Victor?

16 A. He was one of them.

17 Q. Who else?

18 A. I thought we went into that this
19 morning; that I will talk to Pearlman and
20 the guy at --

21 Q. You talked to Pearlman in May. I'm
22 up to October.

23 You said you needed to make
24 one of the issues that Crowley relayed,

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1 that Bressler related to you was the issue
2 of whether we should keep him. At about
3 that time, a little before October 3rd or
4 after October 3rd, who gave you advice on
5 the issue of keep him or not other than
6 Scott Victor, if anybody?

7 A. Well, the other guy with Scott
8 Victor. I can't remember his name.

9 Q. Bemiss?

10 A. Sam is the first name.

11 Q. Anybody else?

12 A. Plus the people on the outside.

13 Q. Which people?

14 A. Mr. Pearlman.

15 Q. I'm sorry, again. Let's restrict it
16 this way. Between October 1st --

17 A. Did I talk to Pearlman after October
18 the first? I don't think I did. I'm not
19 sure.

20 Q. Who did you talk to other than
21 Bemiss after October 1st on the issue of
22 replacing Crowley? Who did you talk to,
23 other than Bemiss, Victor, Bressler, if
24 anybody?

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1 A. I can't think of anybody offhand. I
2 think there were certain discussions, but I
3 can't tell you offhand.

4 Q. You said that you recognized it was
5 a problem that you had to deal with
6 Mr. Crowley's claim, Mr. Crowley's claim
7 for bonuses.

8 A. Against Coram; not against Cerberus,
9 right.

10 Q. Did you ever consider that one way
11 to deal with that claim was to litigate it
12 and say we don't owe you anything?

13 A. That's one way. We talked about
14 that at great length. We thought that
15 extensive litigation at that particular
16 time would undermine the value of the
17 company.

18 Q. Did you come to a conclusion as to
19 the likely result of the litigation,
20 whether it would undermine it or not?

21 A. I don't think so. I can't recall
22 that we did.

23 Q. So you decided not to litigate
24 without knowing whether you had a winning

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1 case because you simply didn't want
2 extensive litigation, is that a fair
3 characterization?

4 MR. KIPNES: I would object.
5 Way beyond the scope.

6 THE WITNESS: Also, expense
7 of the litigation. That's a big item
8 with us.

9 BY MR. LEVY:

10 Q. Would that additional -- do you
11 agree with what I said before -- read the
12 last question, if you would.

13 (Testimony read back.)

14 A. That was one of the elements, but
15 not the only element. You have to keep in
16 mind that in the fall of 2002, we had
17 litigation with R-Net; we had litigation
18 with Price Waterhouse; we had litigation
19 with the IRS. We had one other case that I
20 can't think of. These litigations were
21 costing Coram and the creditors a great
22 deal of money and the equity holders, too.
23 I was concerned that we would be creating
24 the impression that we were using this as a

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1 litigation mill to generate fees and things
2 of that sort. I thought that that would
3 not be the right signal to be sending the
4 people who were interested in this. So, to
5 the extent that you could resolve disputes
6 peacefully, it was in the best interest of
7 everyone and most especially the Bankruptcy
8 Court. So, that was a very important
9 factor to make.

10 Q. Did you consider at that time that
11 you could have sold the company and simply
12 reserved the litigation claims?

13 A. We did. Yes, we did.

14 Q. Why wasn't that a good solution?

15 A. We didn't think we would succeed.
16 We explored that.

17 Q. Who is "we"?

18 A. Our group, Mr. Bressler, myself,
19 Mr. Marabito. My team, we talked about it
20 all the time.

21 Q. Who else did you rely on for that
22 decision beside the people you just named?

23 MR. GODNICK: Objection.

24 Beyond the scope.

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1 MR. KIPNES: Whether to sell
2 the company?

3 THE WITNESS: That was my
4 judgment and I take responsibility for
5 that.

6 BY MR. LEVY:

7 Q. At this time, how big was, how big
8 did you understand that Mr. Crowley's claim
9 against Coram to be?

10 A. For some reason, the filing of
11 \$11,000,000 comes into my mind. I'm not
12 sure of that.

13 Q. Does \$11,200,000 sound about right?

14 A. Could be.

15 Q. Did you fear at that time that if
16 Mr. Crowley wasn't satisfied he would quit?

17 A. I didn't fear it, though. It was a
18 concern because I knew that I could always
19 go out and try to run the company myself,
20 but it would unsettle the situation. I
21 didn't think it was a sought after solution,
22 but I didn't fear it.

23 Q. You were concerned about it?

24 A. Concerned, yes.

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1 Q. Here we are on October 3rd and
2 Schreiber says to Bressler, with a copy to
3 you, let's discuss these things. What's
4 the next thing that happened as far as you
5 now recollect in these discussions about
6 settlement?

7 A. I think the next thing was that I
8 told Mr. Bressler that this was a
9 peculiarly good assignment for him to deal
10 with Mr. Crowley's lawyer. He seemed to
11 get along reasonably well with him, didn't
12 always agree with him. He had many
13 discussions with him and he got the work to
14 try to hammer out the best deal possible
15 and to bring it back to me.

16 Q. That was performing a, largely, a
17 business function rather than a legal
18 function when he went out to hammer out a
19 deal?

20 A. Combination business/legal.

21 Q. Next is a letter dated October 18
22 from Mr. Schreiber to Mr. Bressler with a
23 copy to Crowley. It's Trustee number 6512
24 through 14 inclusive. It's dated

216

1 October 18. That would be number 23.

2 (Trustee-23, a letter dated
3 October 18, marked for identification.)

4 MR. KIPNES: The letter is
5 from Mr. Steven K. Sims who, I believe,
6 is a partner of Mr. Schreiber's.

7 MR. LEVY: You are correct.

8 MR. KIPNES: With a copy to
9 Schreiber.

10 BY MR. LEVY

11 Q. Do you recall receiving this letter
12 or a copy of this letter?

13 A. No.

14 Q. Do you recall Barry Bressler
15 discussing the contents of this letter with
16 you?

17 A. I think he came in and told me about
18 it.

19 Q. Did he tell you, for example, that
20 Mr. Crowley asserted now a claim of 17.3
21 million dollars against Coram?

22 A. I heard that, yes. I heard that
23 figure.

24 Q. What was your reaction when you

217

1 heard that?

2 A. I almost hit the roof.

3 Q. Does that mean you got angry?

4 A. No. I don't get angry.

5 Q. Explain to me what "hit the roof"

6 means in Adams jargon.

7 A. It sounded pretty high to me.

8 Q. Sounded ridiculous?

9 MR. KIPNES: Objection to

10 the form.

11 A. It was awfully high.

12 Q. What did you tell Barry about it?

13 A. I hardly had to tell him anything.

14 He knows me and my attitude about figures

15 like that. I doubt if I had to tell him.

16 He said, "I know that you will never even

17 consider anything like that." I said, "You

18 are absolutely right" or something to that

19 effect.

20 Q. Now, I notice in here in paragraph 9

21 that you are being requested -- this is,

22 obviously, a request on behalf of Crowley

23 for you to agree to use your best efforts

24 to promptly seek dismissal of any

218

1 derivative claim.

2 A. That's what he was asking.

3 Q. Is that the first time in the
4 negotiations you recall that he asked to
5 get a release?

6 A. I think so. I can't recall.

7 Q. It's a fact, isn't it, that much
8 later you offered formally a deal to
9 Crowley in which you would not only use
10 your best efforts, but you agreed in any
11 plan that you would provide he would get a
12 release?

13 A. I don't recall that precisely.

14 MR. KIPNES: Objection to
15 the form.

16 A. I would have to look at the document.

17 Q. Did you consider that the claim,
18 given Judge Walrath's opinion, everything
19 she said, what you needed to consider, the
20 claim against Crowley had any value at all?

21 MR. KIPNES: Objection to
22 the form of the question. I instruct
23 the witness not to answer. Now, we are
24 talking about the proposed resolution of

219

1 the proposed derivative complaint which
2 the judge held a mediation on
3 September 25, 2002, about and, I
4 believe, that is way beyond the scope of
5 today's deposition and I would urge the
6 judge not to get into any discussions
7 about his views on the proposed
8 derivative complaint.

9 BY MR. LEVY:

10 Q. The reason judge -- since he made a
11 speech, you ultimately are here proposing
12 to keep Crowley; you are doing that
13 partly -- part of the plan you have proposed
14 would be to give him a release. I want to
15 know, coming to the conclusion you did, on
16 the motion you are trying to succeed on
17 whether you considered the value of the
18 claim against Crowley?

19 MR. KIPNES: Objection to
20 that question. It misstates the
21 Trustee's motion. The Trustee's motion
22 that we are here about today is not
23 dependent on a release, has nothing to
24 do with a release, stands or falls on

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1 its own merits. It's not tied to
2 anything else.

3 THE WITNESS: I adopt that.

4 I think what Mr. Kipnes said is correct.

5 I think what Mr. Kipnes has said is my
6 understanding and I adopt that as my
7 understanding.

8 BY MR. LEVY:

9 Q. Let me ask you this question: If
10 you want to refuse, fine. I need to ask
11 the question to get an answer or a refusal.
12 Did you, in considering what kind of deal
13 you were going to make with Crowley, consider
14 the value of the claim that the estate had
15 against Crowley?

16 A. Yes.

17 MR. KIPNES: Objection.

18 BY MR. LEVY:

19 Q. Can you give me a number as to a,
20 what value that was?

21 A. I can't give you a number.

22 Q. Was it -- did you consider the fact
23 that both Goldin and Judge Walrath said he
24 had caused \$13,000,000 worth of damage as a

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1 result of the first plan?

2 MR. GODNICK: Objection to
3 the form of the question, the
4 characterization of the judge's opinion
5 and Jay Goldin's report.

6 MR. KIPNES: I would urge
7 the witness not to answer.

8 THE WITNESS: We considered
9 the matter generally. I can't give you
10 figures.

11 BY MR. LEVY:

12 Q. Who is the "we"?

13 A. Our team.

14 MR. KIPNES: Objection to
15 the question. I will instruct him not
16 to answer the question. Now, you are
17 into my work product and he is not
18 answering that question. Next question.

19 BY MR. LEVY:

20 Q. As of the time you received this
21 letter, was it your understanding, this
22 October 18 letter, Exhibit 23, that
23 Schreiber was proposing two separate deals,
24 that is, something, to stay on for six

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1 months and something in the plan or that he
2 was proposing one deal that would cover
3 both issues?

4 A. Well, you said at the time I
5 received this letter. I did not receive
6 this letter. Mr. Bressler merely told me
7 about it.

8 Q. Based on what he told you, what was
9 your understanding?

10 A. I don't think I can react to your
11 question. I didn't know what Schreiber had
12 in mind. I didn't know he was trying to
13 try to extract from us as much as he could.
14 I was going to resist it. That was
15 paramount in my mind.

16 Q. Did you ask Bressler whether he was
17 proposing two deals, one an up-front
18 payment?

19 A. No, I did not.

20 Q. Did you ever come to an understanding
21 as to whether Crowley, through Schreiber,
22 was proposing one deal, that is to say, pay
23 me something now and pay me something on
24 confirmation or two separate deals, just

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1 pay me something now and we will worry
2 about the rest later?

3 MR. KIPNES: Asked and
4 answered. I object.

5 THE WITNESS: I don't think
6 we segmented our thinking to that
7 extent. At least, I didn't know that.
8 I didn't segment my one deal, two deals.

9 BY MR. LEVY:

10 Q. You thought of it as one deal?

11 A. Yes. I wanted to resolve it.

12 Q. Next document is -- it's not right
13 for you to comment to the witness. You
14 know that.

15 Next exhibit is a Scott
16 Schreiber letter. This time it's dated
17 November 8, 2002. It's from Scott
18 Schreiber to Barry Bressler. 6412 is the
19 number on bottom right.

20 (Trustee-24, a letter dated
21 November 8, 2002, marked for
22 identification.)

23 BY MR. LEVY:

24 Q. Do you remember seeing a copy of

224

1 that letter?

2 A. I don't think I saw a copy of this
3 letter, but I think Mr. Bressler advised me
4 of his receipt of the letter.

5 Q. What did he advise you?

6 A. If they had given him official
7 notification pursuant to the agreement of
8 termination.

9 Q. The "they" being Crowley?

10 A. And his counsel.

11 Q. You understood that as of November 8
12 Crowley had terminated his contract with
13 Coram?

14 A. He had given us notice of termination.

15 Q. Do you distinguish that from
16 terminating?

17 A. There is a slight difference.
18 Notice of termination, he called it notice
19 of termination.

20 Q. Now, knowing that he had given a
21 notice of termination, did you run out and
22 say we better get someone to replace him?

23 A. We were thinking about that all the
24 time.

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1 Q. I mean specifically in response to
2 Bressler telling you that he had gotten a
3 notice of replacement, of termination.

4 A. We didn't segment our discussions
5 now that we got this, do we do that? We
6 were talking about this -- this was a major
7 issue with us. What are we going to do
8 with Crowley? Are we going to have a
9 contract? Suppose we don't have a
10 contract? What are the implications?
11 Every day we talked about this. He would
12 come in. Where are you on this issue? We
13 would discuss it. We didn't segment the
14 way your question would suggest. I can't
15 answer that question.

16 Q. When Bressler comes in and says he
17 is terminated, that caused no particular
18 ripple in your thinking?

19 A. It didn't surprise me.

20 MR. KIPNES: Objection.

21 THE WITNESS: It didn't
22 surprise us that they had sent the
23 termination notice.

24 BY MR. LEVY:

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1 Q. Why?

2 A. Because if he was a good negotiator,
3 he wanted to say to Mr. Bressler in effect
4 I want you to know we are terminating the
5 agreement. It's important for us to have a
6 new agreement in place.

7 Q. When you were negotiating the
8 transition agreement, which is the subject
9 of next Monday's motion, is it fair to say
10 that it was always contemplated that that
11 was part of negotiating a consensual plan
12 which would have Crowley's agreement as to
13 the amount of money he was to be paid on
14 confirmation?

15 MR. KIPNES: Objection to
16 the question. The document speaks for
17 itself. Mischaracterizes the terms of
18 the document. Misstates the record.

19 MR. LEVY: I would object to
20 your putting a document in front of the
21 witness.

22 THE WITNESS: I asked for
23 it.

24 MR. KIPNES: If you object,

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1 I won't let the witness see the
2 document.

3 BY MR. LEVY:

4 Q. Is it your understanding that the
5 agreement that is the subject matter of
6 your motion, the transition agreement, was
7 entered into in contemplation of trying to
8 negotiate a consensual plan with Crowley
9 among others which would release his claims?

10 MR. KIPNES: Objection to
11 the form of the question.

12 THE WITNESS: We had that
13 very much in mind. We had that very
14 much in mind.

15 BY MR. LEVY:

16 Q. Will you adopt the word contemplation?

17 A. Yes.

18 Q. This is 6515, which is a letter
19 dated November 26, 2002, from Barry
20 Bressler to Scott Schreiber and Steven
21 Sims.

22 (Trustee-25, a letter dated
23 November 26, 2002, marked for
24 identification.)

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1 BY MR. LEVY:

2 Q. Do you recognize this as a letter
3 that Bressler sent to Crowley's lawyers?

4 A. I recall that Dan, that Barry
5 discussed this with me. I don't recall
6 specifically if he showed me this draft.

7 Q. Based on this discussion, this had
8 your approval?

9 A. No question about that.

10 Q. Now, at the time you authorized this
11 letter, is it fair to say that your state
12 of mind was that you wanted to work out a
13 deal with Crowley, ask him what his state
14 of mind was, let him tell us instead of
15 stumbling around like a blind man
16 suggesting answers to questions when you
17 know they are wrong --

18 MR. LEVY: I would like to
19 incorporate my prior comment about your
20 comments.

21 MR. BEATIE: 101.

22 BY MR. LEVY:

23 Q. So far as we can see, this letter
24 does not propose, November 26th is the date

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1 of the letter, any transition payment.

2 A. Yes.

3 Q. At this point, you had not yet
4 agreed to give Crowley a million dollars
5 transition payment?

6 A. There is something here. Hold on a
7 second.

8 Q. Perhaps you are looking at paragraph
9 6.

10 A. Yes. That's a blank.

11 Q. At that point, you were
12 contemplating that you were going to
13 propose reduction in his claims similar to
14 those suggested in the Goldin report?

15 A. Yes.

16 Q. Except for the first and second fail
17 plan confirmations, right?

18 A. Right.

19 Q. What was your understanding at that
20 time as to the reductions that would be
21 made based on these criteria?

22 A. Reductions in the bonuses?

23 Q. Reductions in his claims, yes.
24 Looking at paragraph 6.

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1 MR. KIPNES: Again, I
2 object. Beyond the scope of this
3 deposition.

4 THE WITNESS: I can't tell
5 you as of November 26th. This was a
6 continuing negotiation. I can't stop it
7 at each date and tell you where we were.
8 That is beyond me. That's why I asked
9 Mr. Bressler to negotiate it. He was
10 telling me, generally, but I can't tell
11 you date by date.

12 BY MR. LEVY:

13 Q. The next is a letter dated
14 December 2nd, 2002. But I note that it
15 says 2003.

16 MR. KIPNES: On the
17 document.

18 MR. LEVY: We will correct
19 that, with the understanding that that
20 could not be.

21 BY MR. LEVY:

22 Q. That is a letter, Bates numbers
23 Trustee 6528 through 6529.

24 (Recess taken, 3:58 p.m.)

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1 (Resumed 4:07 p.m.)

2 MR. LEVY: I want to state
3 on the record something that you missed.
4 The Equity Committee is withdrawing its
5 Notice of Deposition of Steven Feinberg
6 in the 30(b)(6) Notice of Deposition of
7 Cerberus this Friday. We reserve at
8 some future time to take his deposition.
9 We are not going to take it at this
10 time.

11 THE WITNESS: Okay.

12 BY MR. LEVY:

13 Q. Let's look, then, at -- Mr. Adams,
14 can you tell me why you caused a Motion for
15 Authority to Reject Executory -- Mr. Adams,
16 why did you authorize the filing of a
17 Motion to Reject the Executory Contract
18 with Mr. Crowley?

19 A. I know we discussed it. I can't
20 answer that question right now. I don't
21 have a recollection why I did it, but I did
22 it.

23 Q. Was it part of your negotiations
24 with Crowley?

232

1 A. Probably, yes.

2 Q. Now, I would like to put in front of
3 you the transition agreement which is the
4 subject matter of your motion, at least.
5 It's dated December 24, 2002. It does not
6 have Bates numbers because it came, the
7 copy I have came from the exhibit. I think
8 it's Exhibit D to your motion.

9 A. Is this the twenty-fourth?

10 Q. Yes.

11 A. I got it.

12 Q. Now, first, will you agree with me
13 that though Crowley's title was changed,
14 actually your understanding was that he was
15 to render, essentially, the same services
16 to Coram as he had up to that point?

17 A. Pretty much, yes.

18 Q. Pretty much. Is there any change at
19 all?

20 A. I can't think of anything sitting
21 here. That's why I used the expression
22 pretty much.

23 Q. And in that agreement which, by the
24 way, you signed yourself --

233

1 A. I did.

2 Q. And Dan Crowley signed?

3 A. He did. I assume he signed it
4 himself. His name is on it.

5 Q. You agreed to seek court approval of
6 it?

7 A. Yes.

8 Q. That was on December 24th?

9 A. I think that's the date, yes.

10 Q. But you didn't attempt to seek court
11 approval until January 24th, a month later,
12 is that correct?

13 A. I think that's correct.

14 Q. Why did you wait a month to seek
15 court approval?

16 A. Well, you are in the holiday season.
17 I don't think it was advert as such. It
18 was mainly because of other things.

19 Q. Well, what other things, sir?

20 A. The holiday season.

21 Q. The holiday ended December 31st to
22 January 2nd. You waited three weeks to
23 file it.

24 A. I think I was away. I think I was

1 away. I think so.

2 Q. Did you need to be there to file it?

3 A. No. I needed to be there to
4 authorize it. My recollection is I was
5 away.

6 Q. I'm sorry, sir, you signed it. You
7 needed further authorization to file a
8 motion, is that your testimony?

9 A. They did not want to proceed
10 without, yes.

11 Q. Who told you that?

12 A. I think Mr. Bressler.

13 Q. You agreed in this transition
14 agreement in paragraph 7 to pay, subject to
15 court approval, to pay Crowley a stay in
16 performance bonus of a million dollars?

17 A. Correct.

18 Q. So, that's for staying for six
19 months?

20 A. Roughly. Approximately.

21 Q. So that raised, in effect, raised
22 his salary for the next six months by a
23 million dollars, is that right?

24 A. In effect.

235

1 Q. You also agreed to raise his salary
2 to 80,000 a month from 48,000 a month?

3 A. About fifty, yes.

4 Q. Why did you do that?

5 A. Because we had to. I didn't do it
6 willingly. That was the negotiation. If I
7 had my way, I would have kept everything
8 the same.

9 Q. Why didn't you just say no?

10 A. I could have said no, but for the
11 reason that I have already mentioned, a
12 number of times. I thought it was for the
13 benefit of the creditors, the equity
14 holders and the institution.

15 Q. Did Crowley say I will quit if you
16 don't --

17 A. Would he have said it?

18 Q. Did he say it?

19 A. Yes. That was the implication; if
20 we didn't meet the terms, he was ready to
21 leave.

22 Q. Did he actually say that to you at
23 any point?

24 A. He didn't negotiate it. His

1 attorney negotiated it. Mr. Schreiber.

2 Q. Did his -- were you part of these
3 negotiations at all?

4 A. I did not talk to Mr. Schreiber. I
5 didn't talk to his attorney.

6 Q. So, you never face-to-face
7 negotiated with Crowley with respect to
8 this transition agreement, is that correct?

9 A. I talked to Crowley about it, yes.
10 He made it clear that he would leave, yes.

11 Q. You did this in the face of a threat
12 that he was going to quit?

13 A. I don't believe -- he didn't deal
14 with me with threats. That's not what
15 happened. He had the position -- he took
16 the position that he, more than anyone
17 else, had suffered financially as a result
18 of what had gone on for two or three years.
19 He didn't get any bonuses. His salary,
20 according to him, not according to me, was
21 minimal for a person taking that
22 responsibility. He had not gotten the
23 bonuses that he was entitled to; he had
24 incurred substantial legal fees; he was

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1 unhappy financially, not with the job he
2 was doing. He didn't think he had been
3 treated fairly financially and he created
4 the impression with me -- he didn't say you
5 either do it or I walk. He never treated
6 me that way. Very few people have, I might
7 say. In fact, I can't recall in my
8 lifetime that anybody ever has done
9 anything like that. But, he made it pretty
10 clear that there would be no continuation.

11 Q. That was your understanding anyway
12 from what he said?

13 A. Yes.

14 Q. In the course of these negotiations
15 with him, did he talk about reimbursement
16 for counsel fees as part of the deal?

17 A. Specifically, yes, he did.

18 Q. So, he was claiming a right to
19 indemnity from the corporation because he
20 had incurred counsel fees as a result of
21 his activities?

22 A. He didn't use the expression
23 indemnity. Maybe you could characterize it
24 that way.

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1 Q. Did he say who the legal fees were
2 payable to?

3 A. We assumed that it was Schreiber.

4 Q. Did you ever see Schreiber's bills?

5 A. No.

6 Q. Do you know whether Mr. Bressler
7 did?

8 A. He would have to show them to us.

9 You see, two hundred thousand dollars is a
10 cap. He doesn't get the two hundred
11 thousand dollars. It's a maximum, as I
12 remember it.

13 Q. It says, "not to exceed two hundred
14 thousand."

15 A. That's right.

16 Q. What do you feel -- what did you at
17 that time feel or what do you feel now
18 entitled him to recover legal fees from
19 Coram?

20 MR. KIPNES: Objection to
21 the form of the question.

22 THE WITNESS: What?

23 BY MR. LEVY:

24 Q. What, why did you feel he was

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1 entitled to recover legal fees from Coram?

2 MR. KIPNES: Objection to
3 the form of the question.

4 THE WITNESS: I didn't feel
5 that he was entitled to recover
6 anything. I thought that we, I thought,
7 quite frankly, he was more interested in
8 the tax implications because he could
9 have just said I want a signing bonus of
10 a million dollars. So, he divided that
11 for his benefit to eight hundred plus
12 two hundred. I didn't query why he
13 wanted that division, but I assumed it
14 was for tax reasons. I can assure you
15 that we made the best deal we could
16 under the circumstances unless we wanted
17 to lose him. That was a possibility
18 which weighed on my mind a great deal.

19 BY MR. LEVY:

20 Q. Did you at about this time before
21 you put your name on here go back to any of
22 your advisors and consult them again about
23 the damage that might occur to the company
24 if you did lose him?

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1 A. Not again. No, I did not.

2 Q. I take it -- didn't you consult any
3 crisis managers to see whether they thought
4 there would be any damage at that time?

5 A. No.

6 Q. How did the salary get up to \$80,000
7 from \$48,000?

8 A. Bargaining. That's all. Was I
9 happy about it? No. That's an easy one.

10 Q. Are you happy about it now?

11 A. No. I'm not happy anytime about
12 salaries that are that high. Do you have
13 to pay those salaries in this climate of
14 ours? I suspect yes. I regret it, but I
15 think that's a fact of life.

16 Q. Did you at this time ever consult a
17 compensation expert to determine what the
18 appropriate level of salary was for a man
19 of a company this size in this industry?

20 A. Yes. I had talked about that
21 considerably all during the last half of
22 2002.

23 Q. To who? To what compensation
24 expert?

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1 A. The compensation people. By the
2 way, I was the compensation person at
3 Albert Einstein Medical Center. I worked
4 with the consulting firm and I was always
5 unhappy about the level of their salaries.
6 But, there is no doubt that that is what
7 the advisors and the consultants were
8 telling us.

9 Q. What consultant person did you talk
10 to at about the time you agreed to this
11 transition agreement?

12 A. I didn't talk to anyone at that
13 time.

14 Q. When was the time prior to that that
15 you had, prior to the signing of this
16 transition agreement, that you had talked
17 to a compensation expert about appropriate
18 levels of compensation for a man in
19 Crowley's position?

20 A. All during the last half of 2002.

21 Q. Name a compensation expert who you
22 talked to all during the last half of 2002.

23 A. I didn't talk to a compensation
24 expert. I talked to the people at Albert

1 Einstein that were dealing with these
2 people almost on a month-to-month basis.

3 Q. Who did you talk to at Albert
4 Einstein?

5 A. Jack Adler, Jr., Chairman of the
6 Board; Ralph Roberts, who had served with
7 me who was the retiring CEO of Comcast.
8 People like that that.

9 Q. What did Jack Adler say about this
10 compensation?

11 A. "I can understand how you feel. I
12 don't know what you can do about it.
13 That's the going rate."

14 Q. So, he said what is the going rate?

15 A. What we were talking about is 650,
16 750, 850.

17 Q. Did he say it was a going rate to
18 give in addition to the 80,000 a month
19 which is -- did he say 80,000 a month, a
20 million dollars a year was the going rate?

21 A. No. I thought you were talking
22 about the 80,000 a month. He did not -- I
23 never talked to him about the million
24 dollars.

1 Q. The \$80,000 a month is roughly --
2 it's \$960,000?

3 A. That right.

4 Q. Did he say that was the going rate?

5 A. No. He didn't say specifically that
6 \$960,000 was the going rate.

7 Q. Did anybody who you consulted during
8 the last half of 2002?

9 A. Well, the discussions didn't -- it
10 didn't take the form of your questions.
11 They talked about, generally, what was
12 going on in the health care industry and
13 the equipment industry.

14 Q. Have you ever estimated the cost to
15 Coram of the additional benefits, other
16 than salary and a million dollar stay
17 bonus, the cost to Coram of such things as
18 health, dental and disability insurance,
19 million dollars of whole life coverage,
20 transportation allowances, tax preparation
21 costs? Did you ever add all that up?

22 A. I did. I'm appalled at the expense.
23 Don't forget all of those limits were in
24 place when I came into the company.

1 Q. But the contract had expired.

2 A. That's true. But it's very
3 difficult to ask somebody to stay on and
4 say, by the way, all of these things are
5 gone now. Obviously, they are not going to
6 do it. You wouldn't do it in your law
7 firm. Nobody around this table would do it
8 if all of a sudden the senior partner of
9 some of these law firms would call their
10 partners in saying starting January 1st we
11 are not covering health, not covering life,
12 we are not covering your travel expenses,
13 we are not covering this and that. What
14 would they do? Would they say if you don't
15 do that, we are going to leave? I don't
16 know what they would do. They would be dam
17 unhappy.

18 Q. Tell me about your bargaining back
19 and forth where he wanted more than a
20 million dollars.

21 A. Yes.

22 Q. You wanted to pay him less than
23 that. Tell me about the time when it came
24 together at around a million dollars. What

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1 did you discuss then?

2 A. I can't tell you. Those discussions
3 were by Mr. Bressler and his attorney.

4 Q. Did Mr. Bressler at some point say
5 to you this is the best I can do?

6 A. He did. We had to make a judgment.
7 I was very unhappy.

8 Q. Did you think, maybe, you ought to
9 try once more to say I'm not going to pay
10 you a million dollars, Dan?

11 A. I don't think that would have served
12 any purpose.

13 Q. You didn't do it?

14 A. I did not do it.

15 Q. Let me ask you a question. You said
16 you had to do this. Did you ever
17 contemplate at the time you signed this
18 what if Mr. Crowley had said or had left
19 you the impression that I will leave unless
20 I get a \$2,000,000 transition bonus, would
21 you have accepted that?

22 MR. KIPNES: Objection to
23 the question.

24 THE WITNESS: No. That is

1 hypothetical. I wouldn't have. I had
2 reached the top. I think all of the
3 elements beside the money, it was very
4 difficult for me to argue. They would
5 be decreases in compensation.

6 BY MR. LEVY:

7 Q. Would it be fair to say that the
8 only --

9 A. As far as the monthly payment is
10 concerned, it's higher than he was getting,
11 but don't forget, he had not received an
12 increase for three and one-half years, I
13 believe. Everyone else in the company had
14 received an increase. If you factor the
15 ten percent that they were getting, 10, 10,
16 ten, it seems like 30, but it's more like
17 40, because one is on top of the other.
18 So, he was not getting very much more than
19 his colleagues/compatriots were getting.

20 Q. Did you consider at the time that he
21 was not only getting \$80,000 month for the
22 this transition period which for a year
23 would have been a million dollars, but for
24 that same six months he was getting another

1 million dollars so, in effect, his salary
2 for the six months of 2003 was not \$80,000
3 a month, but \$160,000 a month?

4 MR. KIPNES: Objection to
5 the form of the question.

6 BY MR. LEVY:

7 Q. Did you consider that?

8 A. Yes. You are really talking to the
9 choir really now. I'm in complete
10 agreement that these figures are high, but
11 I'm also aware that unless you meet those
12 figures, you are not going to have a
13 negotiation and you are not going to have a
14 contract.

15 I think it's too high to pay
16 an associate \$150,000 a year, but what am I
17 going to do about it? Sure, it's too high.
18 It's outrageous. I have an associate here.
19 It will do me a lot of good to stand on the
20 table and say that. If you don't pay them,
21 they all walk out. You have to be
22 realistic.

23 Q. Will you agree with me that this
24 transition agreement, part of Exhibit 2,

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1 was entered into in contemplation of a
2 supplemental agreement that was entered
3 into about a month later?

4 MR. KIPNES: Objection to
5 the form.

6 BY MR. LEVY:

7 Q. Do you agree with that?

8 A. That's correct.

9 Q. Did you consider by yourself or with
10 your counsel that this transition agreement
11 was filed on December 24th?

12 A. It wasn't file then.

13 Q. It was signed on December 24th; the
14 need to file a Form 8-K to advise the
15 investing public that a transition
16 agreement had been executed.

17 A. Did I do that? No. That is a
18 matter which would be up to Mr. Devine.

19 Q. Have you ever discussed with him why
20 they didn't file an 8-K at that time?

21 A. I did not discuss that with him.

22 Q. On January 3rd, a letter was written
23 by Mr. Bressler to Mr. Schreiber. It has
24 numbers that I fear I can't read because

249

1 your Bates number went off the page. We
2 think it is 651720.

3 MR. KIPNES: We can read 20
4 and 19 -- that is 60520 and 6519. That
5 is 6520. Let's mark it Trustee X. Is
6 that okay? Mark it Trustee next
7 exhibit. I don't care.

8 MR. LEVY: I'm talking about
9 for -- I will mark it Trustee 8,000
10 because that is past your numbers. 8001
11 and 8002.

12 (Trustee 26, a letter dated
13 January 3, 2003, marked for
14 identification.)

15 BY MR. LEVY:

16 Q. Trustee Exhibit 26 is a letter dated
17 January 23rd, 2003. I'm sorry,
18 January 3rd, 2003. It's on Schnader
19 stationery. It is addressed to Scott
20 Schreiber and it has a Barry Bressler
21 signature block. I have now marked 8000
22 and 8001. Have you seen that before today?

23 A. I think I did.

24 Q. Did you approve it?

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1 A. I did.

2 Q. The first -- I would ask you to look
3 at the last sentence of the second
4 paragraph.

5 A. Last --

6 Q. Paragraph 2 on the first page on
7 page 8000.

8 MR. KIPNES: Do you mean the
9 second paragraph or the paragraph
10 numbered?

11 MR. LEVY: I mean the second
12 un-numbered paragraph.

13 THE WITNESS: "This letter
14 will serve to reflect the intent."

15 BY MR. LEVY:

16 Q. Read that to yourself. Have you
17 read that paragraph?

18 A. I have.

19 Q. The second sentence says, "This
20 Settlement Agreement is being negotiated
21 and finalized in connection with the
22 Transition Agreement."

23 A. Yes.

24 Q. Did you authorize that provision?

1 A. I did.

2 Q. And the proposal at this point
3 which, I assume, you authorized is that
4 Coram would pay Crowley an additional
5 \$2,000,000, is that correct?

6 A. Correct.

7 Q. Correct?

8 A. Correct.

9 Q. The total he would get is three
10 million dollars?

11 A. That right.

12 Q. And in the second paragraph, you
13 said that, "the Trustee will in turn seek
14 to provide Dan with the fullest release
15 approved by the Bankruptcy Court of all
16 proposed derivative and related claims."

17 A. Correct.

18 Q. Do you know whether that provision
19 changed in the next -- you didn't sign this
20 exhibit.

21 A. No.

22 Q. You signed a subsequent?

23 A. Yes.

24 Q. Do you know whether that provision

1 said that you would seek --

2 A. I don't recall.

3 Q. Did you approve -- well, you
4 approved the whole thing?

5 A. Yes.

6 Q. Let's now go to -- here, again, the
7 numbers seem to be completely blocked out.
8 The second page. This is a letter dated
9 January 7, 2003. The second page appears
10 to have number 65 -- let's mark this as we
11 did the prior one. I will call this
12 Trustee 8003 and Trustee 8004.

13 (Trustee-27, a letter dated
14 January 7, 2003, marked for
15 identification.)

16 THE WITNESS: This one I
17 have seen. Is that the question?

18 BY MR. LEVY:

19 Q. I will adopt that.

20 A. Yes.

21 Q. I notice in paragraph 2 that the
22 provision about releasing Dan Crowley from
23 proposed derivative claims has changed from
24 "will seek to release him" to "will release

1 him."

2 A. Yes, I see that.

3 Q. Did you approve that change from the
4 prior draft?

5 A. I did.

6 Q. Why?

7 A. I did it pursuant from advice from
8 Barry Bressler.

9 Q. Barry told you that Crowley wouldn't
10 go along if you didn't put that in?

11 A. I think he said it would be -- yes.

12 Q. Did you ever talk to Crowley about
13 it?

14 A. Did I? No, I did not. I did not
15 negotiate this. This was handled by
16 Mr. Bressler. I have complete confidence
17 in him. He is an outstanding bankruptcy
18 lawyer. I gave him the guidelines and I
19 was not happy about it, as I have said a
20 number of times, as to the amounts here.

21 Q. You still are not happy?

22 A. Still not happy about it. I think
23 they are high amounts, but I think that the
24 hourly charges by lawyers are too high.

1 I'm not happy about them.

2 Q. Did you sign this on or about

3 January 7?

4 A. I did.

5 Q. So you were in town on January 7.

6 Did you sign it some other place?

7 A. I can't tell you that. I don't

8 recall that.

9 Q. I hand you -- can you explain why

10 you waited until January 4th, 24th, which

11 is two-and-a-half weeks after January 7th

12 to file the application to approve the

13 transition agreement?

14 A. My vague recollection is I was away.

15 But I can't -- I'm sure I was away in

16 January, but I can't give you the dates. I

17 looked in my pocket for my diary. I don't

18 have it. I know I was away. In fact, you

19 were away and I remember talking to Don,

20 your colleague, and he told me you were

21 away. So that's why I'm sure. He wanted

22 to know why I wasn't going away and I told

23 him I was, indeed, going away. If you wait

24 a second, I can give you the dates.

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1 Q. You can tell me the days you were
2 away?

3 A. I think I might. I went away on --
4 I was away on the 11th of January. I left
5 on the 11th, 12, 13, 14, 15, 16, 17 and
6 18th.

7 Q. Can you explain to me, sir, why in
8 the application or Motion for Approval of
9 the Transition Agreement you did not
10 disclose the existence of the supplemental
11 agreement which is, it says here, was
12 finalized in connection with the transition
13 agreement?

14 MR. KIPNES: Objection to
15 that question.

16 THE WITNESS: I can't. I
17 didn't handle that. I can't tell you
18 that. I don't know.

19 BY MR. LEVY:

20 Q. The next document is a Form 8-K
21 filed on January 14 by Coram. We will mark
22 that.

23 (Trustee-28, a Form 8-K,
24 marked for identification.)

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1 BY MR. LEVY:

2 Q. You participated in the preparation
3 of this Form 8-K, would that be correct?
4 That was filed on January 24th, not the
5 14th.

6 A. That's right. It says January 24th.

7 Q. Did you participate in the
8 preparation of this Form 8-K?

9 A. Yes.

10 Q. You approved it?

11 A. Well, you say approved it. I didn't
12 object to it.

13 Q. And it reveals under Item 5 that as
14 a Chapter 11 Trustee, you have filed a
15 motion to approve the transition agreement,
16 is that correct?

17 A. It says that.

18 Q. And it does -- and it does not -- it
19 does not disclose that by January 24th you
20 had already signed a supplemental agreement
21 executed in connection with the transition
22 agreement to pay, in which you offered to
23 pay Dan an additional \$2,000,000, did you?

24 MR. GODNICK: Objection.

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1 This goes more to a motion to remove
2 this particular Trustee than it does to
3 the Crowley retention/termination
4 issues.

5 MR. KIPNES: It doesn't say
6 that, does it? I assume we can all
7 agree it doesn't say it.

8 BY MR. LEVY:

9 Q. Why wasn't that included?

10 MR. KIPNES: Objection.

11 THE WITNESS: I can't tell
12 you. I'm not a securities lawyer. I
13 can't tell you that.

14 BY MR. LEVY:

15 Q. Did you ever discuss it with
16 anybody, that question?

17 A. No, I did not discuss that with
18 anybody.

19 Q. In retrospect, sir, do you feel that
20 your motion to approve the transition
21 agreement which is up next Monday should
22 have disclosed the supplemental agreement
23 executed in connection with it?

24 MR. KIPNES: Objection to

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1 the question.

2 THE WITNESS: That is a
3 legal question. I defer to
4 Mr. Bressler. I don't know the answer
5 to that.

6 BY MR. LEVY:

7 Q. Did you ever discuss that with him?

8 A. I don't recall.

9 MR. LEVY: I would like to
10 take about a five-minute break. I think
11 we are about done.

12 (Off the record, 4:28 p.m.)

13 (Back on the record, 4:32
14 p.m.)

15 BY MR. LEVY:

16 Q. Mr. Adams, let me refer for a moment
17 again to the supplemental agreement
18 executed by you on January 7.

19 A. Correct.

20 Q. You called it a supplemental
21 agreement. Did you consider it a letter of
22 intent for a supplemental agreement?

23 MR. KIPNES: Objection to
24 the form.

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1 THE WITNESS: I didn't

2 characterize it.

3 BY MR. LEVY:

4 Q. Has Crowley ever signed that

5 January 7 letter, Exhibit 22, 27?

6 A. Address that question to

7 Mr. Bressler.

8 Q. You don't know?

9 A. I don't know the answer to that. I

10 assume that he did. I'd rather ask

11 Mr. Bressler who knows.

12 Q. When was the last time you talked to

13 Dan Crowley?

14 A. I was in Denver last week.

15 Q. When were you out there with

16 Mr. Crowley?

17 A. February 6 and February 7.

18 Q. February 6 and 7 you were there?

19 A. Yes.

20 Q. Did you at that point discuss the

21 additional settlement agreement which we

22 have marked as Exhibit 27?

23 A. No.

24 Q. Never came up?

1 A. The context of the meeting was quite
2 different. It was an operational meeting;
3 what they were doing, what the plans were
4 and things of that sort. We didn't get
5 into this subject.

6 Q. Who accompanied you to that meeting?

7 A. I think Joe went out with me.

8 Q. The lawyer?

9 A. Yes.

10 Q. Joe Devine?

11 A. Yes.

12 Q. You didn't bring any health care
13 experts with you to that meeting?

14 A. No.

15 Q. We talked earlier about what you
16 said was your agreement, that Mr. Crowley
17 could work on Cerberus matters during 2002
18 subject to three conditions: He not get
19 paid, that there not be a conflict with
20 Coram, and would not interfere with his
21 work.

22 A. That is right.

23 Q. Do you know how many such
24 transactions he actually worked on during

1 2002?

2 A. I do not.

3 Q. Did you ever ask?

4 A. No. I don't think I did.

5 Q. Did you ever ask anyone to ask him
6 in your behalf?

7 A. No, I don't think so.

8 Q. Do you know the names of any of the
9 companies?

10 A. He did mention some names. They
11 meant nothing to me.

12 Q. Did you take any steps to determine
13 whether in fact they were competitive with
14 Coram?

15 A. They were not in the same business
16 as Coram; completely different businesses.

17 Q. How do you know that, sir?

18 A. I know some of these companies.

19 Q. Tell me one you know.

20 A. I can't tell you that offhand.

21 Q. Tell me what business one was in?

22 A. I can't tell you.

23 MR. LEVY: I have no further
24 questions.

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1 MS. KRUGMAN: Can I just
2 speak with Barry for a minute privately?

3 MR. KIPNES: I will pick up
4 the speaker.

5 (Off the record.)

6 (Back on the record.)

7 MS. KRUGMAN: I have no
8 questions.

9 MR. KIPNES: I believe we
10 are done.

11 MR. LEVY: Is anybody here
12 serious about trying to take Feinberg's
13 deposition between now and the hearing?
14 I'm just asking.

15 MR. BEATIE: What?

16 MR. LEVY: The hearing is on
17 Monday.

18 MR. GODNICK: You took a
19 different position. Frankly, Mike and I
20 have not had an opportunity to discuss
21 this at length. I'm sure counsel to the
22 Trustee wants to give it some
23 consideration. Perhaps, they want to
24 talk to us.

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1 MR. BEATIE: I'm confident
2 the answer is no. No deposition between
3 now and Monday.

4 MR. LEVY: I'm going to
5 New York from here to get ready for
6 Crowley. I plan to go back on Thursday.
7 I would like to do it. Let me know.

8 MR. KIPNES: Why do you want
9 this on the record?

10 MR. LEVY: To get some
11 assurance.

12 MR. BRESSLER: When did you
13 decide that you were not going to take
14 his deposition?

15 MR. LEVY: When I got,
16 basically, a lot of answers from
17 Mr. Adams.

18 MR. BRESSLER: So it wasn't
19 yesterday or the day before?

20 MR. LEVY: No.

21 (Deposition concluded, 4:40
22 p.m.)

23

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1 CERTIFICATION

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MICKEY DINTER
Registered Professional Reporter

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I hereby certify that the
testimony and the proceedings in the
aforegoing matter are contained fully
and accurately in the stenographic notes
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1 SIGNATURE PAGE

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3

4 I hereby acknowledge that I
5 have read the foregoing transcript, and
6 the same is a true and correct
7 transcription of the answers given by me
8 to the questions propounded, except for
9 the changes, if any, noted on the errata
10 sheet.

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13 SIGNATURE:
14 DATE:

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